

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CURLEE C. DENNIS,

Plaintiff,

v.

WELLS FARGO BANK, NA, et al.,

Defendants.

No. C 10-2328 PJH

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

Plaintiff's motion for preliminary injunction came on for hearing on July 14, 2010 before this court. Plaintiff, Curlee C. Dennis ("plaintiff"), appeared in pro per. Defendant Wachovia ("defendant" or "Wachovia") appeared by telephone through its counsel, Christopher Carr. Having read all the papers submitted and carefully considered the relevant legal authority, the court hereby DENIES the motion for preliminary injunction, as stated at the hearing, as follows.

Plaintiff's complaint alleges five causes of action against defendant Wachovia and others: (1) declaratory relief; (2) breach of contract; (3) misrepresentation/fraud; (4) quiet title; and (5) violations of the Racketeering Influenced and Corrupt Organizations Act ("RICO"). As the court highlighted to plaintiff at the previous hearing on plaintiff's motion for temporary restraining order, for a plaintiff to successfully seek a preliminary injunction, the law requires that the plaintiff establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest (where the public interest is at issue). See Winter v. Natural Resources Defense Council, Inc., 129 S.Ct. 365, 374 (2008); see also Munaf v. Geren, 128 S.Ct. 2207, 2218-19 (2008). Noting that

1 the plaintiff could likely satisfy the irreparable harm requirement, the court furthermore
2 instructed plaintiff to focus on the likelihood of success factor in connection with any one
3 cause of action, in bringing any preliminary injunction motion.

4 Plaintiff's motion fails to satisfy this standard. Indeed, the vast majority of plaintiff's
5 motion targets arguments unrelated to any of the claims asserted in plaintiff's complaint.
6 Plaintiff's motion, for example, addresses violations of the Consumer Legal Remedies Act;
7 defendant World Savings Bank's securitization of instruments, resulting in conversion and
8 unjust enrichment ; defendant World Savings Bank's predatory lending; an invalid
9 substitution of trustee performed by defendants Cal-Western Reconveyance Corporation
10 and Wells Fargo; and a World Savings Bank and its agents' wrongful breach of a purported
11 agent-trustee relationship. See generally Mot. Prelim. Inj. None of these arguments
12 relates to the merits of any claim asserted in plaintiff's underlying complaint – or even, in
13 fact, any claim asserted therein against *Wachovia* specifically.

14 Reading plaintiff's arguments as charitably as possible, only one of her arguments –
15 that regarding the existence an unconscionable and unenforceable contract – may be
16 construed as an argument in connection with the merits of her underlying breach of
17 contract claim. However, plaintiff's argument fails to identify the precise contract at issue,
18 the parties purportedly bound by the contract, or the means by which any provision of such
19 contract is unconscionable or unenforceable. This alone dooms plaintiff's argument. See,
20 e.g., First Commercial Mortgage Co. v. Reece, 89 Cal. App. 4th 731, 745 (2001)(elements
21 of a breach of contract claim are the existence of a contract, performance by the plaintiff or
22 excuse for nonperformance, breach by the defendant, and damages). Moreover, to the
23 extent plaintiff argues instead that she was “induced into signing” an “illegal cognovit note”
24 that prevented her from “intentionally, deliberately, or intelligently and knowingly” waiving
25 her due process rights, such an argument is both nonsensical and lacking in merit. A
26 “cognovit” is “an acknowledgment of debt or liability in the form of a confessed judgment,”
27 and is traditionally an instrument signed by a defendant. Black's Law Dictionary (Eighth
28

1 Ed.). It is not immediately apparent, and plaintiff does not explain, how such an instrument
2 is either relevant to the current action, or even in existence. All of which collectively
3 demonstrates to the court that, even construed liberally, plaintiff's arguments regarding her
4 breach of contract claim fall short of establishing a likelihood of success on the merits of
5 her claim.

6 In short, because plaintiff has failed to come forward with any argument that
7 adequately establishes her likelihood of success on the merits of any underlying claim, the
8 court DENIES the motion for preliminary injunction.

9
10 **IT IS SO ORDERED.**

11 Dated: July 15, 2010



PHYLLIS J. HAMILTON
United States District Judge